Government's Trial Brief (Redacted Version)

Nov. 12, 1997

U.S. District Court, Eastern District, Sacramento

- Summary of Charged Bombs
- Elements of the Charged Offenses
- Evidentiary Issues
- Admissibility of Testimonial Evidence
- Foundational Questions Regarding Admissibility May Be Resolved Outside the Presence of the Jury Pursuant to FRE 104
- Defense Case
- Allegations Regarding The FBI Laboratory Are Not Admissible to Impeach the Government's Expert Witnesses

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
V.
THEODORE JOHN KACZYNSKI,
Defendant.
CR NO. S-96-0259 GEB
GOVERNMENT'S TRIAL BRIEF
(REDACTED VERSION)

DATE: November 12, 1997
TIME: 9:00 a.m.
COURT: Hon. Garland E. Burrell

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`I.<em>INTRODUCTION</em>`

The defendant, Theodore Kaczynski, is charged in this district with offenses arising out of four bombings between 1985 and 1995. These bombings formed part of an 18-year scheme in which the defendant mailed or placed 16 bombs in an effort, as Kaczynski himself phrased it, to ”kill someone I hate” and to gain ”revenge on society”. Throughout this scheme, Kaczynski sought to build increasingly lethal bombs by improving his bomb design and his bombmaking techniques. Kaczynski achieved success in his eleventh bomb, which resulted in the death of Hugh Scrutton and which forms the basis for Count One of the indictment. The bombs charged in the remaining counts were the thirteenth, fourteenth, and sixteenth bombs mailed or placed by Kaczynski and resulted in the death of Gilbert Murray and serious injuries to Drs. David Gelernter and Charles Epstein. A seventeenth, fully functional bomb was discovered during the search of Kaczynski's cabin in April, 1996.

In Section II, the government summarizes the 18 year reign of the ”Unabomber” and provides details regarding each of the bombings and the type of proof which the government intends to present for each one.

In Section III, the government has attempted to set forth the elements of the charged crimes and to provide the Court with relevant authority pertaining to those elements and the necessary proof at trial.

In Section IV, the government has attempted to identify and provide the Court with authority for evidentiary issues which may arise with respect to the government's proof.

In Section V, the government has attempted to identify issues that may arise in the defense portion of the case or in the defendant's cross-examination of government witnesses.

`II.<em>FACTS</em>`

A. *An Individual Dubbed the ”Unabomber”*

Between May 25, 1978 and April 24, 1995 an individual dubbed the ”Unabomber” was responsible for 16 bombings throughout the United States. The bombings, which are set forth below, resulted in 3 deaths and 29 injuries:

No.	Date	Location of Explosion	Injuries
1	5/26/78	Chicago, IL	Minor injury to police officer
2	5/9/79	Chicago, IL	Moderate injury to student
3	11/15/79		

Chicago, IL

18 cases of smoke inhalation after emergency landing of jetliner

4

6/10/80

Chicago, IL

Major injury to UAL President

5

10/8/81

Salt Lake City

Device failed to explode

6

5/5/82

Nashville, TN

Major injuries to secretary

7

7/2/82

Berkeley, CA

Major injuries to professor

8

5/15/85

Berkeley, CA

Major injuries to student

9

6/13/85

Auburn, WA

Device disarmed

10

11/15/85

Ann Arbor, MI

Moderate injuries to graduate student

11

12/11/85

Sacramento, CA

Death of Hugh Scrutton

12

2/20/87

Salt Lake City

Moderate injury to businessman

13

6/22/93

Tiburon, CA

Major injuries to professor

14

6/24/93

New Haven, CT

Major injuries to professor

15

12/10/94

No. Caldwell, NJ

Death of Thomas J. Mosser

16

4/24/95

Sacramento, CA

Death of Gilbert B. Murray

Although the defendant is only charged with four of the devices in this district, the government will seek to prove that the defendant is responsible for all sixteen devices. The government will also seek to introduce evidence that, during the search of Kaczynski's cabin, agents found a fully functional bomb. As explained in the government's 404(b) motion, due to the interlocking nature of the evidence, proof that the defendant was responsible for any one of the bombs tends to strengthen and reinforce the evidence with respect to other bombs.

In each of the 16 bombings an improvised explosive and/or incendiary device was used. Eight of the devices contained the initials "FC" stamped on a piece of metal or on the end plug of the pipe bomb. Prior to Kaczynski's arrest, experts in the field of bomb construction and forensics, identified significant similarities among the bombs and concluded that all of the bombings had been carried out by the same individual or group of individuals acting in concert. Experts also concluded that the same typewriter had been used to type all the mailing labels and correspondence from the Unabomber since 1982.

In June, 1993, the New York Times received a letter from an individual claiming to represent an anarchist group known as "FC". The letter, which was mailed at the same time and from the same location as Devices 13 and 14, stated that it preceded a "newsworthy event". The writer of the letter provided "an identifying number that will ensure the authenticity of any future communication from us.

On April 20, 1995, the Unabomber mailed Device 16 which killed Gilbert B. Murray, the president of the California Forestry Association. At the same time and from the same location "FC" mailed four letters. A letter from "FC" to the New York Times commenced: "We blew up Thomas Mosser last December . . . " and claimed responsibility for Devices 5, 13, 14 and 15 and generally described a 17 year history of bombing. The letter explained that the author could now make more deadly bombs but proposed to desist from further terrorist activities if the Times agreed to publish a 29,000 to 37,000 word article written by him. A letter from "FC" to David Gelernter, the victim of Device 14, taunts Gelernter for opening "an unexpected package from an unknown source." Finally, letters to nobel prize winning geneticists Phillip Sharp and Richard Roberts contained the following "warning from FC": "It would be beneficial to your health to stop your research in genetics."

On June 27, 1995, the San Francisco Chronicle received a letter from "the terrorist group FC, called unabomer by the FBI" which stated that the group was planning to "blow up an airliner out of Los Angeles International Airport some time during the next six days". The letter had the effect of paralyzing nationwide air travel over the long Fourth of July weekend.

On June 28, 1995, the New York Times, received a "message from FC", which supplied the secret identifying number referred to in previous correspondence. In the letter, the author claimed responsibility for Devices 3, 6 and 16. In a postscript, the author states that the threat to bring down an airliner was a "prank". Enclosed with the letter was the original of the promised manifesto, a 67 page diatribe entitled "Industrial Society and It's Future by FC", which argues that the "industrial revolution and its consequences have been a disaster for the human race." At the same time, "FC" sent carbon copies of the manuscript with different cover letters to the Washington Post, Penthouse Magazine and UC Berkeley Professor Tom Tyler. The Unabomber also sent a letter to Scientific American further expounding on his anti-technology views.

Commencing on April 3, 1996, the FBI conducted a search of Kaczynski's one-room cabin. Among other things the agents located:

1. The typewriter used to type all identifiable Unabomber correspondence since 1982. This typewriter ties Kaczynski to mailing labels and correspondence which accompanied Devices 6, 7, 9, 10, 13, 14 and

15. The typewriter also connects Kaczynski to the letters to the New York Times in which "FC" claims responsibility for Devices 3, 5, 6, 13, 14, 15 and 16 and a seventeen year history of bombing. It also connects Kaczynski to the manifesto and the threat to bring down an airliner.

2. A carbon copy of the manifesto (the original was sent to the New York Times).

3. A handwritten draft of the manifesto.

4. Handwritten or carbon copies of several of the letters that were sent by the "Unabomber", including those that accompanied bombs, letters to the New York Times, and cover letters which accompanied the manifesto to the New York Times, Washington Post, Penthouse Magazine and Professor Tyler and the letter to Scientific American.

5. A handwritten autobiography written around 1979 which contains the statement that Kaczynski intends to start killing people and that the purpose of the autobiography is to explain that he is not sick.

6. Notebooks written largely in Spanish or in code (together with the key to the code) and a journals written in English which together contain admissions or inculpatory statements to each of the 16 bombing incidents. (*1. Defense counsel have entered into a written stipulation that virtually all of the handwritten documents found in the cabin, including the autobiography, the journals and the Spanish and coded notebooks, were written by the defendant. The government intends to present this stipulation in open court so that the court may assure that the stipulation was knowingly and voluntarily made by the defendant.* See United States V. Miller*, 588 F.2d 1256, 1263 (9th Cir. 1978) ("It is the responsibility of the trial judge when accepting a stipulation or waiver to assure that it is voluntarily made.");* United States v. Ferreboeuf*, 632 F.2d 832, 836 (9th Cir. 1980) ("[W]hen a stipulation to a crucial fact is entered into the record in open court in the presence of the defendant, and is agreed to by defendant's acknowledged counsel, the trial court may reasonably assume that the defendant is aware of the content of the stipulation and agrees to it through his or her attorney."*)

7. Three-ring binders which memorialize Kaczynski's experiments over the years with various types of bombs and explosive chemical compounds. These experiments show a clear progression in Kaczynski's bomb-making capabilities, describe the construction of several of the Unabom devices and how each was deployed. Kaczynski's coded notes also occasionally refer to a particular device as being the product of a particular experiment.

8. A piece of paper on which was written the secret ten-digit identifying number used by the Unabomer.

9. Green paneling nails which have been forensically matched to green paneling nails used as shrapnel in the Murray (#16) and Mosser (#15) bombs.

A fully functional improvised explosive device which is similar in design and construction to the Murray bomb (#16) and components of which can be forensically associated with components of Epstein (#13) and Gelernter (#14) bombs.

10.Various bomb components including triggers, initiators, pipes and chemicals.

Government's Trial Brief (Redacted Version)
Nov. 12, 1997

unabombertrial.com

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